

SUPREME COURT OF MISSISSIPPI

John A. (Pap) Moore v. Stacey W. Parker

No. 2006-EC-00899-SCT · No. No. 2006-EC-00899-SCT · Decided June 9, 2006

SUMMARY

The Mississippi Supreme Court reviewed an election contest arising from the May 2005 Democratic mayoral primary in Houston, Mississippi. The Court affirmed the finding that at least nine illegal votes were cast for John A. Moore and rejected challenges concerning jurisdiction, filing requirements, attorney certification, timeliness, evidentiary issues, and the scope of review. It reversed the tribunal's order for a special primary runoff and rendered judgment requiring the Governor to call a special election under Mississippi Code Annotated section 23-15-937.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Smith, Chief Justice, for the Court; Waller, P.J.; Diaz, P.J.; Carlson, J.; Graves, J.; Dickinson, J.; Randolph, J.
JURISDICTION	Mississippi
DECIDED	June 9, 2006
DOCKET	No. 2006-EC-00899-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order of a Special Election Contest Tribunal concerning the May 2005 Democratic mayoral primary in Houston, Mississippi. The tribunal ordered a special primary runoff election after finding that at least nine illegal or fraudulent votes had been cast for Moore.
STANDARD OF REVIEW	Questions of law, including statutory interpretation and jurisdiction, are reviewed de novo. The tribunal's factual findings concurred in by all attending commissioners are not subject to appellate review under Mississippi Code Annotated section 23-15-933. Summary judgment rulings are reviewed de novo, with evidence viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; en banc and precedential.
PARTIES	John A. (Pap) Moore v. Stacey W. Parker

TOPICS

election contests

appellate jurisdiction

statutory interpretation

hearsay

standard of review

PRACTICE AREAS

election law

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evidence

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QUESTIONS PRESENTED

1. Whether the Supreme Court had authority to review the legal issues arising from the special tribunal's election-contest order.
2. Whether Parker satisfied the statutory prerequisites for an election contest, including filing with the proper executive committee, stating sufficiently specific grounds, providing notice for inspection of the ballot boxes, obtaining independent attorney certifications, and filing the petition for judicial review forthwith.
3. Whether the special tribunal exceeded the scope of review by considering matters not raised in Parker's original contest petition.
4. Whether Moore waived his challenge to hearsay testimony by failing to object before the tribunal.
5. Whether the circuit court improperly denied summary judgment based on affidavits allegedly unrelated to Parker's election-contest allegations.
6. Whether the special tribunal ordered the legally correct remedy when it directed a special primary runoff rather than a special election called by the Governor.

HOLDINGS

1. Mississippi Code Annotated section 23-15-933 bars appellate review of qualifying factual findings but does not bar review of the tribunal's legal conclusions. Because the issues presented were legal questions, the Supreme Court had authority to decide them.
2. Parker satisfied the filing requirement of section 23-15-921 by personally serving his May 11 petition on a member of the Houston Democratic Executive Committee, even though his earlier handwritten notice had been delivered to the city clerk.
3. The lack of specificity in Parker's May 4 handwritten notice did not defeat the contest because Parker submitted a more specific petition on May 11, and the statute did not prohibit an additional petition.
4. Parker complied with Mississippi Code Annotated section 23-15-911 because the candidates received notice on May 4, five days before the May 9 inspection.
5. Attorneys are not disqualified from making the required independent investigation merely because they are employed by the same firm. Independence requires detachment from the contestant and the contest, not independence from the other certifying attorney.
6. Parker's petition, filed fifteen days after the last executive-committee meeting, satisfied the statutory requirement that the petition for judicial review be filed forthwith.

7. The tribunal acted within its permissible scope because its findings concerning illegal and fraudulent absentee ballots were germane to Parker's allegations of illegal affidavit voting and related ballot irregularities.
8. Moore waived his hearsay challenge to David Douglas's testimony by failing to make an objection before the tribunal.
9. The affidavits and letter/affidavit relied upon in denying summary judgment were relevant to Parker's allegations because they described illegal or fraudulent affidavit voting.
10. When a contestant prevails in a contested primary, Mississippi Code Annotated section 23-15-937 requires the Governor to call a special election; the tribunal therefore erred by ordering a special primary runoff election.

KEY QUOTATIONS

“While the statute deems final the tribunal’s findings of fact, its legal conclusions are reviewable by this Court on appeal.” (at 3)

“However, to be “independent” an attorney only need be disassociated from the contest, not from the other certifying attorney.” (at 9)

“There has never been an exact number of days determined as a minimum to meet the “forthwith” requirement.” (at 10)

“The special tribunal erred in ordering a special primary run-off election to be held when it is statutorily mandated that the Governor call such election.” (at 15)

FACTUAL BACKGROUND

In the May 3, 2005, Democratic mayoral primary for mayor of Houston, Mississippi, John Moore received 921 votes, while Stacey Parker received 552 votes. Parker promptly filed a notice of contest, inspected the ballot boxes, and later served a more specific petition on a member of the municipal Democratic Executive Committee. After the committee failed to act, Parker sought judicial review. The special tribunal found at least nine illegal or fraudulent absentee ballots had been cast for Moore, but ordered a special primary runoff rather than the special election required by statute.

PROCEDURAL HISTORY

Parker filed a notice and later a formal petition contesting the mayoral primary. After the municipal Democratic Executive Committee failed to act, Parker filed a petition for judicial review in the Chickasaw County Circuit Court. Moore intervened and moved to dismiss and/or for summary judgment. Following a trial, the special tribunal found at least nine illegal votes cast for Moore and ordered a special primary runoff. The Mississippi Supreme Court affirmed the finding of illegal votes but reversed and rendered the remedy, directing that the Governor call the statutorily required special election.

DISPOSITION

REMAND INSTRUCTIONS

The tribunal's order was reversed to the extent it ordered a special primary runoff. Judgment was rendered that the Governor shall call the required special election for Mayor of Houston in accordance with Mississippi Code Annotated section 23-15-937 and other applicable law governing municipal special elections. The Clerk was directed to mail certified copies of the opinion to the Governor and specified election officials.

CASES CITED

- Boyd v. Tishomingo County Democratic Executive Committee, 912 So. 2d 124, 128 (Miss. 2005)
- Harris v. Stewart, 187 Miss. 489, 507, 193 So. 339 (1940)
- Shaw v. Burnham, 186 Miss. 647, 191 So. 484, 486 (1939)
- Pearson v. Jordan, 186 Miss. 789, 192 So. 39, 40 (1939)
- Pittman v. Forbes, 186 Miss. 783, 191 So. 490 (1939)
- Upton v. McKenzie, 761 So. 2d 167, 171 (Miss. 2000)
- Esco v. Scott, 735 So. 2d 1002 (Miss. 1999)
- McDaniel v. Beane, 515 So. 2d 949 (Miss. 1987)
- Cook v. Brown, 909 So. 2d 1075, 1079 (Miss. 2005)
- Smith v. Deere, 195 Miss. 502, 507, 16 So. 2d 33, 35 (1943)
- Turner v. Henry, 187 Miss. 689, 695-96, 193 So. 631, 632 (1940)
- Waters v. Gnemi, 907 So. 2d 307, 325 (Miss. 2005)
- Darnell v. Myres, 202 Miss. 767, 773, 32 So. 2d 684, 685 (1947)
- Rubenstein v. State, 941 So. 2d 735, 764 (Miss. 2006)
- Williams v. Bennett, 921 So. 2d 1269, 1271 (Miss. 2006)
- Brown v. Credit Center, Inc., 444 So. 2d 358, 362 (Miss. 1983)
- Smith v. Hollins, 905 So. 2d 1267, 1277-78 (Miss. 2005)